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JUNE—JULY 1960

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Recent Decisions

Avoidable—

the bothersome details, the fuss and annoyance, the two-way-stretch of the corporation's personnel when stockholders' meeting time rolls around. All are avoidable, through the use of C T meeting services. The cost is nominal, the service superior, the time saved appreciable.

The Scripto Case

THE power of a state to require an out-of-state seller to collect use taxes has received a great deal of attention since the recent United States Supreme Court decision in the case of *Scripto v. Carson.*[1] In view of the fact that every one of the thirty-three states (plus the District of Columbia) which has a retail sales tax also imposes a use tax, this interest is not surprising.

Use taxes are levied on the storage, use, or other consumption of tangible personal property in the state, and are designed to reach transactions which would not be subject to a sales tax. Such complementary taxes afford protection to local retailers both by protecting them from the disadvantage of competing with untaxed retailers in other states, and by discouraging buyers from purchasing in other states to avoid the local sales tax. This concept of protecting local merchants is evident in the provisions found in the statutes of five states providing that the purchase of certain tangible personal property, when it is not readily obtainable in the taxing state, is exempt from the use tax.[2]

The constitutionality of use taxes is well settled. The first decisions considering a tax in the nature of a use tax decided by the United States Supreme Court, involved gasoline taxes. The court sustained these taxes, holding that they did not impose a direct burden on interstate commerce.[3] The first United States Supreme Court opinion involving a general use tax was that rendered in the case of *Henneford v. Silas Mason Co., Inc.*,[4] in which the court held that the tax was not on interstate commerce but was upon the privilege of use after such commerce was at an end.

Requiring others to collect taxes for the states is not a novel concept, as indicated by the federal and state withholding requirements, and use taxes themselves have long been collected by the seller, although they are ordinarily imposed on the purchaser. Since it was rendered in 1944, the leading United States Supreme Court decision on the question of the extent to which a state could go in requiring out-of-state sellers to collect use taxes had been *General Trading Company v. State Tax Commission.*[5] That case involved a foreign corporation, not qualified to do business in Iowa, and not maintaining any office, branch or warehouse there, which solicited orders in the state through traveling salesmen subject to acceptance at the corporation's home office in Minnesota. The Supreme Court found that such activity brought the transaction within the taxing power of the state and observed that "to make the distributor the tax collector for the State is a familiar and sanctioned device."

After the decision in the *General Trading Company* case, various states broadened their statutory language to require collection of the use tax when a foreign retailer had agents or salesmen regularly engaged in soliciting sales in the state, and some states have included other activities as sufficient to require a seller to collect the use tax. The first determination to be made in any case, therefore, is whether or not the activity of the particular foreign corporation falls within the statutory language.

That the recent decision of the United States Supreme Court enlarging state power to tax involved the Florida use tax is not surprising, since the Florida statute

[1] 80 S.Ct. 619, March 21, 1960.
[2] Arizona, Iowa, Missouri, North Dakota and West Virginia.
[3] *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 52 S.Ct. 631 (1932); *Monamotor Oil Co. v. Johnson*, 292 U.S. 86, 54 S.Ct. 575 (1934).
[4] 300 U.S. 577, 57 S.Ct. 524 (1937).
[5] 322 U.S. 335, 64 S.Ct. 1028 (1944).

contains language broader than that found in the use tax statutes of any other state. In Florida, a dealer required to collect the use tax "includes every person who solicits business either by direct representatives, indirect representatives, manufacturers agents, or by distribution of catalogs or other advertising matter *or by any other means whatsoever* and by reason thereof receives orders for tangible personal property from consumers, for use, consumption, distribution and storage for use or consumption in the state . . ."[6]

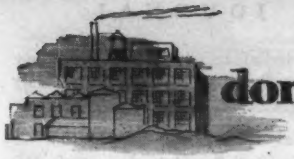
Scripto, Inc. was a Georgia corporation which was not licensed to do business in Florida. Through a wholly owned and controlled division in Atlanta, it sold writing instruments bearing advertising lettering directly to Florida consumers, who distributed them free of charge as a means of advertising. Scripto did not own, lease or maintain any office, distributing house, warehouse or other place of business in Florida, nor did it have any regular employee or agent there. It maintained no bank account or stock of merchandise in the State.

Orders for Scripto's products were solicited by advertising specialty brokers who were wholesalers or jobbers resident in Florida. At the time of suit, Scripto had ten such brokers, each working under a written contract and with a specified territory. The contracts provided, among other things, that all compensation was to be on a commission basis on the sales made, and that it was the intention of the parties "to create the relationship of independent contractor." Each "salesman" was furnished catalogs, samples, and advertising material, and was actively engaged in Florida as a representative of Scripto "for the purpose of attracting, soliciting and obtaining Florida customers." Orders for the products were sent by the "salesmen" directly to the Atlanta office of Scripto for acceptance or refusal. If accepted, the sale was consummated in Atlanta and the salesman was paid his commission directly. No money passed between the salesman and the purchaser, although a salesman occasionally forwarded a purchaser's check with his order.

The United States Supreme Court, Mr. Justice Clark, concluded that Scripto's activities in the State formed a sufficient nexus to subject it to the requirement of collecting the Florida use tax. "We believe that such nexus is present here. First, the tax is a nondiscriminatory exaction levied for the use and enjoyment of property which has been purchased by Florida residents and which has actually entered into and become a part of the mass of property in that State. The burden of the tax is placed on the ultimate purchaser in Florida and it is he who enjoys the use of the property, regardless of its source. We note that the appellant is charged with no tax--save when, as here, he fails or refuses to collect it from the Florida customer. Next, as Florida points out, appellant has 10 wholesalers, jobbers, or 'salesmen' conducting continuous local solicitation in Florida and forwarding the resulting orders from that State to Atlanta for shipment of the ordered goods. The only incidence of this sales transaction that is nonlocal is the acceptance of the order. True, the 'salesmen' are not regular employees of appellant devoting full time to its service, but we conclude that such a fine distinction is without constitutional significance."

As a result of this holding, foreign corporations which may have considered themselves beyond the taxing jurisdiction of a state imposing a use tax will be obliged to reexamine their activities, particularly where they employ independent brokers to solicit sales.

[6] Sec. 212.06, Ch. 212, Title XIII, Florida Statutes. (Italics added.)



domestic corporations

COLORADO

Officers who resigned in the prior calendar year held not liable for failure to file annual report.

One of the questions involved here was: "Does the resignation of corporate officers in the calendar year prior to the date the annual report is in default under C.R.S. 53, 31-7-15, operate to relieve such officers of their statutory liability for failure of the corporation to file the required report?"

The Colorado Supreme Court answered the question in the affirmative, pointing out that "the rationale of the rule is that having severed his relationship with the corporation, the director thereafter has no power to perform the duties imposed by the statute and cannot justly be held for defaults committed by others who continue on or come after him. It appears to be a more reasonable construction of the statute to limit liability to those officers actually chargeable with neglect of duty."

Carpenter Paper Company v. Noble et al., 345 P. 2d 731. Graham Susman, Hyman D. Landy, of Denver, for plaintiff in error. Austin Hoyt, John F. Gallagher, of Colorado Springs, for defendants in error William E. Noble, and Lillian Noble. Mervin A. Ziegler, of Colorado Springs, for defendant in error Margaret Morast.

DELAWARE

Removal of directors, pursuant to by-law permitting removal without cause by majority of stockholders, held invalid where by-law was in conflict with certificate and statute.

Plaintiff majority stockholder brought this action to secure a determination of the validity of the removal of the individual defendants as directors of defendant corporation, pursuant to a by-law permitting such removal without cause by a majority vote of the stockholders at a meeting called for that purpose. The defendant corporation's certificate provided that a director should hold office for a term of three years or until his death or resignation, and that the terms of the directors should be staggered, one-third being elected each year. Section 141(d) of Title 8, Del. C., provides that "directors shall be chosen for a full term," and the certificate implements this by saying that "each director shall hold office for the term for which he is elected."

The Delaware Court of Chancery for New Castle County concluded that the by-law here involved, at least as to its removal without cause provision, was inconsistent with the provision of the certificate calling for staggered three year terms for its directors "because it would permit the removal of directors without cause in a manner which would frustrate

the plan and purpose behind the provision for staggered terms and because it is incompatible with the pertinent language of the statute and the certificate." The Court pointed out that three directors were here purportedly removed at one time although under the certificate and statute only two could be replaced by stockholder vote in any one year. Declaring the "without cause" provision of the by-law invalid, the Court determined that the individual defendants were not validy removed as directors and that their successors were not validly elected.

Essential Enterprises Corporation v. Automatic Steel Products, Inc. et al., 159 A. 2d 288. Louis J. Finger of Richards, Layton and Finger, of Wilmington, and Sylvester and Harris, of New York City, for plaintiff. Henry Horsey of Berl, Potter and Anderson, of Wilmington, for defendants.

NEW YORK

Stockholder entitled, at his expense, to have list of stockholders and addresses furnished by transfer agent where agent's modern equipment can produce lists with little inconvenience and agent is willing to do so.

This was a motion for supplemental relief in connection with a proceeding brought to permit the inspection of corporate books by a stockholder pursuant to Section 113 of the Stock Corporation Law. The corporation consented to the application of the stockholder that he be allowed to examine the books and make extracts and copies, and the stockholder moved for a supplemental order directing the corporation to permit its transfer agent to furnish to the stockholder, at his expense, a certified list of the stockholders with their addresses. The corporation objected that such a procedure would be in effect compelling the corporation to perform the labor necessary to furnish the list, and that such relief could not be given under Section 113.

The Supreme Court, Special Term, Nassau County, held that "where, as in this case as admitted on the argument, a transfer agent is equipped with modern business equipment which would produce the extracts with little inconvenience and such transfer agent is willing to produce such extracts upon payment of its expenses by the petitioner, the respondents will not be permitted to prevent the taking of such abstracts by arbitrarily refusing permission to its agent to furnish the extracts and thus forcing the petitioner to expend endless time and money in making them."

Mencher v. Seminole Oil & Gas Corporation et al., 194 N.Y.S. 2d 162. Harry D. Mencher, of Baldwin, for petitioner. Leonard I. Schreiber, of New York City, for respondents. Wickes, Riddell, Bloomer, Jacobi and McGuire, of New York City, for supplemental respondent.

foreign corporations

IDAHO

Defendant unlicensed foreign corporation held entitled to enforce contract where entire transaction out of which cause of action arose took place in another state.

Defendant unlicensed foreign corporation had attempted to foreclose a chattel mortgage on a tractor, and plaintiff brought this action to contest the foreclosure, urging the court to declare the note and mortgage void on the ground that defendant was not authorized to do business in Idaho. The entire transaction out of which the cause of action arose took place in the State of Washington, although, in other matters and with other parties, defendant may have been doing business in Idaho.

The Idaho Supreme Court held that, regardless of any activities of defendant in Idaho which were "totally unrelated", the note and mortgage "must be treated as a transaction completed in another state, and enforceable within the State of Idaho".

Roberts v. American Machine Company, 347 P. 2d 759. J. H. Felton, of Lewiston, for appellants. Swayne & McNichols, of Orofino, for respondent.

ILLINOIS

Unlicensed foreign corporation held not subject to service of process in Illinois where its activities in Illinois consisted of merely sending mail order catalogs to Illinois residents.

Defendant New Jersey corporation, not licensed to do business in Illinois, was in the mail order business, and mailed catalogs to residents of Illinois. One of defendant's catalogs allegedly contained a picture of one of plaintiff's products, and plaintiff brought suit in the United States District Court for the Northern District of Illinois charging unfair competition. Service was made on defendant in New Jersey, and from an order denying its motion to quash the service, defendant appealed.

The United States Court of Appeals, Seventh Circuit, concluded that defendant's mailing of catalogs to Illinois residents did not amount to those minimal contacts "which are essential to the transaction of any business within the state of Illinois." To plaintiff's contention that by mailing into Illinois catalogs which contained false statements, defendant committed a tortious act within Illinois, the court answered that "defendant did not perform any act in the State of Illinois, tortious or otherwise." The order of the District Court was reversed with directions to quash the service of summons and dismiss the complaint and the action for lack of jurisdiction.

Trippe Manufacturing Company v. Spencer Gifts, Inc., 270 F. 2d 821. Edward A. Haight and William J. Marshall, Jr., for appellant. Stanley R. Weinberger, Leonard Schanfield and William P. Rosenthal, for appellee.

LOUISIANA

Qualification of foreign corporation after filing suit held sufficient to cure whatever incapacity to sue existed prior to qualification.

Plaintiff foreign corporation was not qualified to do business in Louisiana at the time this suit was filed, but qualified after objection was raised as to its capacity to sue. The question before the Court of Appeal of Louisiana, First Circuit, to which the corporation appealed from an adverse judgment below, was whether the corporation's subsequent qualification cured its incapacity to sue, and the Court concluded that the subsequent qualification "cured whatever procedural incapacity may previously have existed."

J. R. Watkins Company v. Floyd, et al., 119 So. 2d 164. Palmer & Palmer, of Amite, for appellant. E. H. Bostick, Jr., of Amite, for appellees.

MISSOURI

Contracts arising out of activities in Missouri by unlicensed foreign corporation held enforceable by holder in due course.

In *Salitan v. Carter, Ealey and Dinwiddie*, 325 S.W. 2d 59, (The Corporation Journal, April—May, 1960, page 328), the Kansas City Court of Appeals held that contracts made in Missouri by an unlicensed foreign corporation, doing business, were void. This opinion has been withdrawn.

In a later opinion, the Kansas City Court of Appeals stated that the question before it was whether or not a holder in due course of a negotiable instrument, purchased from a foreign corporation not authorized to do business in Missouri, could recover on the instrument. Defendant had endeavored to show that the payee of the instrument, the unlicensed foreign corporation, was doing business in Missouri at the time of the transaction out of which the instrument grew. The trial court sustained defendant's motion for a directed verdict, and plaintiff appealed.

The Kansas City Court of Appeals cited Section 351.635, R.S. Mo. 1949, which provides that "No foreign corporation failing to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand whether arising out of the contract or tort, while the requirements of this Act have not been complied with." The court concluded that the phrase "while the requirements of this Act have not been complied with," added in 1937, "changed the prior law of Missouri to the end that contracts of nonlicensed foreign corporations are no longer 'absolutely void' but rather under Section 351.635 are merely unenforceable until such time as the foreign corporation complies with the requirements of the mentioned chapter and that thereafter such contracts may be enforced just as may any other contract of a foreign corporation made at a time when

such corporation was in full compliance with the requirements of the chapter." Since the instrument was not void, the court ruled that a holder in due course could recover against the maker even though the payee had not complied with the statutory conditions to the right to do business in the state. The judgment was reversed and the cause remanded for a new trial.

*Salitan v. Carter, Ealey and Dinwiddie,** 332 S. W. 2d 11. Harry T. Limerick, Jr., of Columbia, for appellant. Stinson, Mag, Thomson, McEvers & Fizzell, of Kansas City, James W. Starnes, Alvin D. Shapiro, of Kansas City, Missouri Bankers Association, amicus curiae. Thompson, Mitchell, Thompson & Douglas, Robert Neill, William G. Guerri, of St. Louis, St. Louis Clearing House Association, amici curiae. Edwin C. Orr, Orr & Sapp, of Columbia, for respondent.

*The full text of this opinion is printed in the **State Tax Reporter**, Missouri, page 10,326.

NEW JERSEY

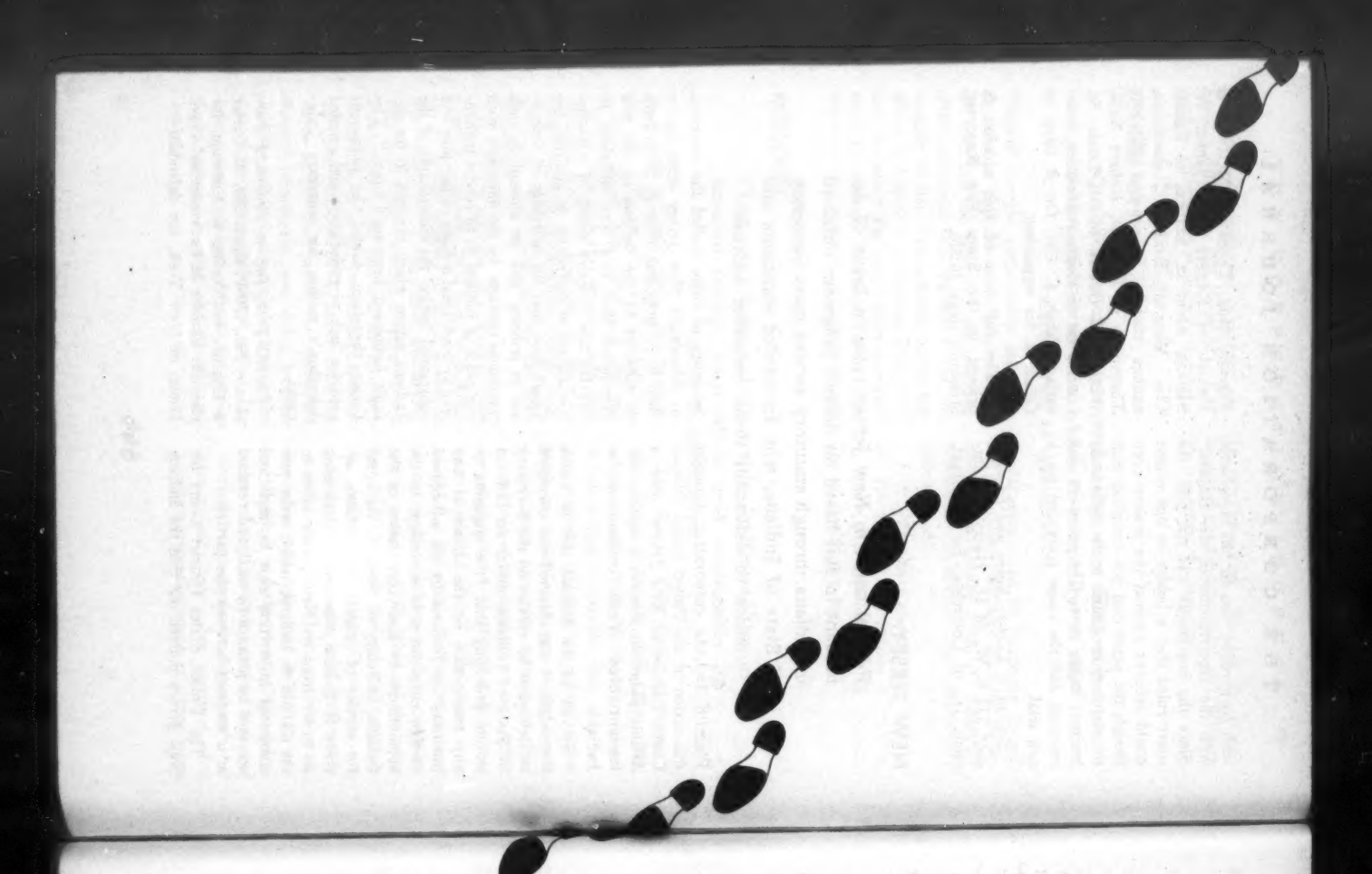
Federal court in New Jersey rules in favor of defendant in suit based on default judgment obtained in Indiana through statutory service upon Secretary of State of Indiana, who forwarded summons and notice to defendant to an incorrect address.

Plaintiff Indiana corporation brought this action in the United States District Court, District of New Jersey, upon a default judgment recovered against defendant New York corporation in Indiana.

Service in the Indiana suit in which the judgment was obtained was attempted on defendant by service on the Secretary of State of Indiana, under an Indiana statute providing that "the engaging in any transaction or the doing of any business" in Indiana by an unlicensed foreign corporation is equivalent to the appointment by such corporation of the Indiana Secretary of State as its agent for service of process. Defendant's activity in Indiana consisted in telephoning an order from its New Jersey office to the plaintiff in Indiana, which order was confirmed in writing sent by mail and accepted by plaintiff by mail, and resulted in a contract between the parties.

The United States District Court for New Jersey pointed out that the Indiana Secretary of State mailed the summons to defendant's New Jersey office rather than to its principal office in New York as required by the Indiana statute, and concluded that this was sufficient to deprive the Indiana court of personal jurisdiction of defendant. In addition, the Court held that the activities of defendant in Indiana "did not amount to such 'minimum contacts' by the defendant with the State of Indiana as to render inoffensive to 'traditional notions of fair play and substantial justice' the maintenance of the Indiana action which resulted in the default judgment here sued upon." The Court, therefore, found the judgment void for lack of jurisdiction and granted defendant's motion for summary judgment.

Chassis-Trak, Inc. v. Federated Purchaser, Inc., 179 F. Supp. 780. McCarter & English, by Verling C. Enteman, for plaintiff. Charles M. Grossman and Copal Mintz, of New York, for defendant.



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NEW YORK

Unlicensed foreign corporation held not doing business in New York so as to be subject to service of process where its activities in the state were limited to purchasing.

Plaintiff, a New York buyer, brought this action against an unlicensed foreign corporation for services rendered. Defendant's president was personally served in New York City, and defendant moved to set aside the service on the ground that it was not doing business in New York. The only activity of the defendant in New York was through the plaintiff, who was a resident buyer representing plaintiff and 18 other retail stores, through another resident fur buyer, and through a buyer or an officer of defendant who came to New York several times a year to make purchases.

The Supreme Court, Special Term, New York County, Part I, concluded that "the defendant, who maintained stores in Indiana, cannot be held to be doing business in this jurisdiction where it solicits no orders in this state for the sale of its merchandise and where practically all that it does here is to buy merchandise, utilizing the facilities of resident buyers." Service of the summons was set aside.

Kohl v. Indiana Fur Co. et al., 192 N.Y.S. 2d 12. Louis L. Kaplan, for plaintiff. Pokart & Pokart (Joseph Pokart, of counsel), for defendants, appearing specially.

taxation

ARKANSAS

Arkansas corporation ruled not taxable on income earned entirely without the state.

The question presented to the Arkansas Supreme Court was whether an Arkansas corporation active both within and without Arkansas was required to pay a state income tax on earnings derived entirely from without the state. The defendant corporation derived such income from the sale outside the state of a large number of shares of another corporation. It excluded from its 1956 income tax return extra-state gain from this transaction, on which it was required to pay tax, and sought recovery. All dealings in connection with the purchase and sale of the stock in question had been conducted outside of Arkansas. The trial court held that the tax on the transaction was wrongful and illegally collected and ordered it refunded to the corporation.

The State Supreme Court considered an Arkansas statute which exempts Arkansas corporations, doing business entirely outside the state, from the payment of taxes other than the franchise tax and ad valorem taxes, thus exempting such corporations from the state income tax, among others, and also considered the state income tax law which excludes from "gross income" income of domestic

corporations, when earned from sources without the state. It also considered prior Arkansas decisions and a decision of the Supreme Court of the United States on comparable facts. Applying these decisions, the court affirmed the judgment of the trial court in holding the corporation not subject to the income tax on income earned outside the state.

Cheney, Commissioner of Revenues v. Stephens, Inc.,* 330 S.W. 2d 949. Herrn Northcutt, for appellant. Mehaffy, Smith & Williams, by William H. Bowen, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Arkansas, page 1668.

FLORIDA

United States Supreme Court affirms judgment requiring foreign corporation selling in interstate commerce to Florida residents to collect Florida use tax.

The Florida Supreme Court, in *Scripto, Inc. v. Carson et al.*, 105 So. 2d 775, (The Corporation Journal, December 1959—January 1960, page 294) held that an unlicensed Georgia corporation selling to Florida residents through independent brokers was required to collect and remit the Florida use tax on the transactions. The corporation sold exclusively through independent brokers who were Florida residents, maintained no bank account or office in Florida, all orders were accepted or rejected in Georgia, and payment was made by the purchasers directly to the corporation in Atlanta.

The Corporation appealed to the United State Supreme Court, contending that the Florida requirement placed a burden on interstate commerce and violated the Due Process Clause of the Fourteenth Amendment. The Court concluded that the corporation's activities in Florida formed a sufficient nexus to subject it to the requirement, pointing out that the only incidence of the sales transaction which was nonlocal was the acceptance, and stating that the fact that the "salesmen" were not regular full time employees was without constitutional significance. The judgment was affirmed.

Scripto, Inc. v. Carson, et al.,* 80 S. Ct. 619. (Docket No. 80.)

* The full text of this opinion is printed in the **State Tax Reporter**, Florida, page 10,213.

MICHIGAN

Unlicensed foreign corporation maintaining salesmen and offices in Michigan held subject to business activities tax on adjusted gross receipts derived from sources in Michigan.

This was an action by an unlicensed foreign corporation to recover business activities taxes paid to Michigan under protest. Plaintiff was an Ohio corporation, with its principal place of business in that state, and was engaged in the production and sale of steel and steel products. It had a sales office in Detroit and a branch office in Grand Rapids, maintained a bank account in Michigan, employed five salesmen and eight clerks in the two offices, and, from time to time, sent various supervisory personnel into the state to facilitate sales and to service customers. All orders were accepted or rejected in Ohio, shipped f.o.b. points outside Michigan, and payments were made in Ohio.

The Supreme Court of Michigan pointed out that, since the tax was on *adjusted* receipts derived from Michigan, it was not a gross receipts tax but was, in fact, an income tax. So considered, and since the apportionment formula fairly apportioned Michigan income, the Court considered the case of *Northwestern States Portland Cement Co. v. Minnesota,* 358 U. S. 450, "definitely controlling." Application of that case "to the facts here, leaves the validity of the Michigan tax undoubted. For here, as in that case, (1) there is no direct restriction on interstate commerce, (2) the tax is not imposed on persons coming into the State for a temporary purpose, such as itinerant drummers, (3) the tax is not laid on the privilege or right of engaging in interstate commerce in the State, (4) the tax does not discriminate against interstate commerce by providing a direct commercial advantage to local business, nor does it subject it to an undue burden, but, on the contrary, it is laid alike on activities in furtherance of either inter or intrastate business, computed according to the adjusted receipts therefrom derived from or attributable to Michigan sources."

*Armco Steel Corporation v. State of Michigan et al.,** Supreme Court of Michigan, April 11, 1960. Dykema, Jones, Wheat, Spencer & Goodnow, of Detroit, for plaintiff. Paul L. Adams, Attorney General, Samuel J. Torina, Solicitor General, and T. Carl Holbrook, Maurice Barbour and William D. Dexter, Assistant Attorneys General, of Lansing, for defendants.

* The full text of this opinion is printed in the **State Tax Reporter,** Michigan, page 10,227.

Joint Legislative Committee to Study Revision of New York Corporation Laws

Senator Warren M. Anderson, Chairman of the Committee, has announced public hearings on the proposed Business Corporation Law (Senate, Int. 3124, Pr. 3316.) The first hearing was held May 13. The schedule of the remaining hearings is as follows:

June 10	Senate Chamber, The Capital, Albany	10:00 A.M.
June 24	Broome County Court House, Binghamton	10:00 A.M.
September 15	Erie County Hall, Buffalo	10:00 A.M.
September 29	80 Center Street Building, New York City	9:30 A.M.

The agenda will include the proposed Business Corporation Law and part III of the Supplement to the Fourth Interim Report of the Committee to the 1960 Legislature. These documents may be obtained from Committee Counsel, Robert S. Lesher, 1708 Rand Building, Buffalo 3, New York. Written and oral statements are solicited, and it is requested that written statements be filed at the hearings in triplicate. Requests for time at the hearings should be sent to the Committee in care of Counsel, not later than one week prior to the hearing, stating the hour, length of time desired and general subject. Unscheduled statements will also be received.

state legislation

Alaska — Chapter 25, H.B. 250, Laws of 1960, effective June 3, 1960, provides that the Commissioner of Revenue shall be the agent for service of process for foreign corporations not authorized to transact business in Alaska which are transacting business in the state.

Arizona — Senate Bill 196, Laws of 1960, effective June 25, 1960, provides that before a shareholder may exercise his right to examine the records of the corporation he must make a written demand for inspection to the president, secretary, assistant secretary or general manager of the corporation. Ten percent of the shareholders present at a meeting may also demand that the records of the corporation be exhibited at the meeting. This demand need not be in writing.

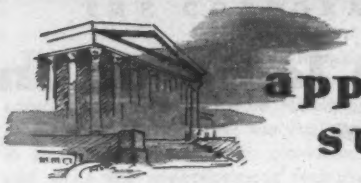
Georgia — Act 882, Senate Bill 168, Laws of 1960, approved and effective March 17, 1960, specifically permits a foreign corporation to be the surviving or new corporation in mergers or consolidations involving Georgia corporations and corporations of other states. Previously the statute permitting merger and consolidation of domestic and foreign corporations was silent as to which could survive or become the new corporation.

Kentucky — House Bill 505 of 1960, applicable with respect to taxable years beginning on or after January 1, 1961, provides for the filing of a declaration and the payment of an estimated tax by domestic and foreign corporations subject to the Kentucky Income Tax, if their tax can reasonably be expected to exceed $5,000. The first return for calendar year corporations will be due on or before May 15, 1961, subject to certain exceptions.

Nevada — Assembly Bill 195, Laws of 1960, provides that the maximum fee to be paid to the Secretary of State upon qualification of a foreign corporation will be $25,000. Formerly, no maximum qualification fee was provided.

South Carolina — House Bill No. 1865, Act 807, Laws of 1960, effective for taxable years beginning after December 31, 1959, changes the South Carolina income tax law so as to take advantage of the United States Supreme Court's decision in the Northwestern States case, by providing that "every foreign corporation transacting, conducting, doing business or having an income within the jurisdiction of this State, whether or not such corporations be engaged in or the income derived from intrastate, interstate, or foreign commerce, shall make a return and shall pay annually an income tax equivalent to 5% of a proportion of its entire net income, to be determined as provided in the Income Tax Act of 1926, as amended."

Virginia — Chapter 442, Senate Bill No. 223, Laws of 1960, effective for tax years beginning after 1959, changes the Virginia Income Tax Law relating to foreign corporations to take advantage of the United States Supreme Court's decision in the Northwestern States case by making the tax liability of foreign corporations depend upon their "having income from sources" in Virginia.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

CALIFORNIA. Docket No. 701. *Cosper v. Smith & Wesson Arms Co.*, 346 P. 2d 409. (The Corporation Journal, December 1959—January 1960, page 288; April—May 1960, page 326.) Service of process—doing business. **Petition for writ of certiorari filed, February 12, 1960. Certiorari denied, March 28, 1960.** (80 S. Ct. 755.)

FLORIDA. Docket No. 80. *Scripto, Incorporated v. Carson*, 105 So. 2d 755. (The Corporation Journal, December 1959—January 1960, page 294.) Interstate commerce—collection of use tax. **Appeal filed, May 27, 1959. Jurisdiction noted, October 12, 1959.** (80 S. Ct. 52.) **Argued, February 24, 1960. Judgment affirmed, March 21, 1960.** (80 S. Ct. 619.) (See pages 343 and 353.)

NEW YORK. Docket No. 745. *Insull v. New York World-Telegram Corporation et al.*, 273 F. 2d 166. (The Corporation Journal, April—May 1960, page 327.) **Petition for writ of certiorari filed, February 29, 1960. Certiorari denied, April 4, 1960.** (80 S. Ct. 807.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin.**

Discussions on Corporation Law

Congressional Regulation of State Taxation of Interstate Commerce, by Paul F. Mickey and George B. Mickum, III. North Carolina Law Review, February, 1960, page 119.

The Handling of Legal Matters of a Corporation By Its Own Law Department, by Andrew Hendrix Knight. 12 Alabama Law Review, Fall, 1959, page 119.

Executive Compensation: The Taxation of Stock Options, by Jack D. Edwards. 13 Vanderbilt Law Review, March, 1960, page 475.

Diagram of Management Control, by James W. Culliton. 38 Harvard Business Review, March—April, 1960, page 144.

Elimination of Minority Share Interest by Merger: A Dissent. 54 Northwestern University Law Review, November—December, 1959, page 629.

Relief for Minority Stockholders; Section 19 of the Technical Amendment Act of 1958, 1 Boston College Industrial and Commercial Law Review, Fall, 1959, page 91.

regulations and rulings

Florida — It is a prima facie presumption that tangible personal property used in another state for 90 days or longer before being brought into Florida is not purchased for use in Florida and, therefore, not subject to the Florida use tax. (Sales and Use Tax Rule 91(2), State Tax Reporter, Florida, ¶ 60-157.)

Missouri — The Missouri Department of Revenue has issued new tax regulations to supplement the new use tax law which became effective August 29, 1959. Regulation C provides that every person storing, using or consuming in Missouri tangible personal property purchased from a vendor after August 29, 1959, is liable for the use tax.

Nebraska — Tax Sales certificates owned by an individual on assessment date are taxable as intangible property. (Opinion of the Attorney General, State Tax Reporter, Nebraska, ¶ 24-627.)

New Mexico — Under the Corporate Reports Act of 1959, the State Corporation Commission's authority to withdraw the right of a corporation to transact business in the state for failure to file an annual report by the March 15th due date is restricted to foreign corporations. However, the commission is authorized to withdraw the right of private corporations, domestic and foreign, to transact any business in New Mexico for failure to pay the franchise tax. (Opinion of the Attorney General, State Tax Reporter, New Mexico, ¶ 200-174.)

The computation to be used in determining fees to be charged on foreign corporations qualifying to do business in New Mexico will be the same as in the case of a domestic corporation where the corporate stock of the foreign corporation consists of shares of stock having no nominal or par value. A foreign corporation which has both par value stock and stock without par value will be required to pay the initial fee based upon "the total amount of capital stock authorized" since Sec. 51-12-1 makes no distinction between par value and no par value stock. (Opinion of the Attorney General, State Tax Reporter, New Mexico, ¶ 200-170.)

North Carolina — North Carolina Department of Revenue has never considered a foreign corporation liable for income tax if its annual operations in North Carolina are the soliciting of orders by salesmen travelling in or through the state regardless of whether the salesmen were residents or non-residents of the state. The mere domestication in North Carolina of a foreign corporation's articles of incorporation would not in itself subject the company to income tax liability. However, it would make the corporation liable for franchise tax. Any corporation maintaining inventories in North Carolina from which sales or shipment are made at the instance of the company would be considered doing business for both income and franchise tax purposes regardless of whether inventories were kept in a public warehouse or private place of business. The regular maintenance of inventories in North Carolina to which a foreign corporation holds title is considered as prima facie liability for income and franchise taxes. (Letter of Director, Corporate Income and Franchise Tax Division, to CCH, State Tax Reporter, North Carolina, ¶ 200-617.)

some important matters

For June and July

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Alaska — Returns of Tax Withheld at the source due on or before July 31.—Domestic and Foreign Corporations.

Arizona — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Colorado — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Connecticut — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Withholding at Source Returns due on or before July 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.

Annual Report on or before June 30.—Foreign Corporations.

District of Columbia — Returns of tax withheld at the source on or before July 31.—Domestic and Foreign Corporations.

Dominion of Canada — Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

Florida — Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

Hawaii — Annual License Fee due on or before July 1.—Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Illinois — Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

Indiana — Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Iowa — Annual Report due between July 1 and August 1.—Domestic Corporations not organized under and *not* adopting the Corporation Act of 1959, and Foreign Corporations qualified prior to July 4, 1959 which have *not* adopted that Act.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations qualified prior to July 4, 1959 which have *not* adopted the Corporation Act of 1959.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

Kentucky — Statement of Existence and Verification of Process Agent due in June—Foreign Corporations.

Verification Report as to process agent due in June—Domestic Corporations.

Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Maryland — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Michigan — Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

Mississippi — Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing five or more persons in Mississippi.

Missouri — Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Montana — Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

Nebraska — Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic and Foreign Corporations.

Nevada — Annual List of Officers, Directors and Designation of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

New York — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

North Carolina — Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

North Dakota — Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Ohio — Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

Oklahoma — Annual Capital Stock Affidavit due during July.—Foreign Corporations.

Annual Franchise Tax Return and Payment due between July 1 and August 31.—Domestic and Foreign Corporations.

Oregon — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Tennessee — Annual Privilege (Franchise) Tax Return and Payment; Annual Report and Tax and Excise Tax Report and Tax; Reports of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

United States — Second Installment of Income Tax due June 15.—Domestic and Foreign Corporations having offices or places of business in the United States.

Utah — Quarterly Retail Sales Tax Returns and Payments due on or before July 30.—Domestic and Foreign Corporations.

Vermont — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Washington — License Fee due on or before July 1.—Domestic and Foreign Corporations.

West Virginia — License Tax Statement due on or before July 1.—Domestic Corporations.

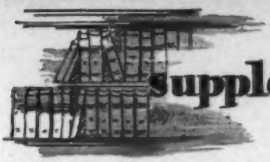
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief work was located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

Wyoming — Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



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Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

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The following C T publications are available only to members of the Bar.

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